

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2009-431-T - ORDER NO. 2010-191

MAY 26, 2010

IN RE:	Application of Kenneth Landert d/b/a	)	ORDER DENYING
	Kountry Trans. (f/k/a Kenneth J. Landert	)	CERTIFICATE
	d/b/a Kountry Limo), 112 Lofty Ridge Road,	)	
	Greenville, SC 29609, for Class C (Charter)	)	
	Certificate of Public Convenience and	)	
	Necessity for Operation of Motor Vehicle	)	
	Carrier	)	

**INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Kenneth Landert d/b/a Kountry Trans. (formerly known as Kenneth J. Landert d/b/a Kountry Limo) (“Landert” or “Applicant”) for a Class C Charter Certificate of Public Convenience and Necessity. Yellow Cab Company of Greenville, Inc. (“Yellow Cab”) filed a Petition to Intervene in this matter and opposed Landert’s application. A full hearing on the matter was held on February 2, 2010. John J. Pringle, Jr., Esquire, represented the Applicant. Dallas D. Ball, Esquire, represented the Intervenor. Jeffrey M. Nelson, Esquire, represented the Office of Regulatory Staff (“ORS”). For the reasons set forth below, the Commission denies Landert’s Application for a Certificate of Public Convenience and Necessity.

**SUMMARY OF TESTIMONY**

At hearing, testifying on his own behalf, Landert stated that he had driven a taxi for approximately five years as an independent contractor driver for Yellow Cab,



followed by a job driving limousines for Atchison Transportation, after which he returned to Yellow Cab until Yellow Cab terminated the relationship in March 2009. Landert testified that following the termination of his contract, he began receiving calls from people seeking rides, and he offered rides for hire without holding certification or licensure to do so. Landert testified that from March 2009 until October 2009, he would estimate that he performed over 4,000 drives for hire. In October 2009, Landert filed his application with the Commission for a Class C Charter Certificate. Landert testified that he had believed he could operate while his application was pending, but that Investigator Patty Vowell of the Office of Regulatory Staff cited him for operating without authority and issued him a \$625 ticket. Landert testified that he did not thereafter operate his car for hire, but instead painted houses for a living.

On cross examination, Yellow Cab submitted into evidence Landert's ten-year driving record reflecting three reportable accidents, nine moving violations, and three driver's license suspensions since March 2004. Cross examination further elicited Landert's admission that when he was fined for offering passenger service without authority, he asserted to the judge that he was unable to pay his fine and requested a payment plan.

Yellow Cab introduced the testimony of three independent contractor taxi drivers who work in the Greenville area, Keith Mahaffey, Michael Evans, and Don Grant. Mr. Grant and Mr. Mahaffey each testified as to multiple incidents in which they allege Landert continued operating as a car for hire after being cited for operating an uncertificated taxi in October 2009. Yellow Cab then introduced the testimony of John



Bacot, the owner of Yellow Cab. Mr. Bacot testified that Landert refused to surrender his City of Greenville taxi permit after Yellow Cab terminated his contract in March 2009, and held himself out as a licensed operator for months thereafter using the permit. Mr. Bacot further testified as to his opinion with regard to the effect of current economic conditions on the taxi and limousine business. He concluded his testimony by asking the Commission to deny Landert's application.

Patty Vowell, an Investigator for ORS, testified that she was not aware of incidents in which Landert operated without certification after being cited in October 2009, and she expressed the opinion that, if Landert had in fact refrained from offering taxi or limousine services after being cited, she believed Landert to be fit, willing, and able to operate a limousine.

### **ANALYSIS**

This case presents difficult issues of public safety, credibility and disregard for Commission authority. While the Applicant has incurred expense and expended much effort to obtain a Class C Charter certificate, we find that he does not meet the fit, willing, and able requirement for approval of the certificate for which he has applied. Among other things, an applicant for a passenger carrier certificate must demonstrate that he is fit as that term is described in S.C. Code Ann. Regs. 103-133(4)(a). The evidence shows that the Applicant has a poor driving history. The facts that he has since taken a defensive driving course and that some of the violations and suspensions have now "aged out" of his current three-year driving record do not change the fact that he has a history of multiple moving violations, collisions, and suspensions which would give anyone ample



reason to question his fitness as a motor carrier operator of any type. Landert's history of violations, collisions, and suspensions, standing alone, is sufficient evidence, in our view, to disqualify him from receiving the certificate he seeks.

Furthermore, Landert's testimony to the effect that he did not operate as a car for hire at any time after being cited by Officer Vowell of ORS in October 2009, is directly and irreconcilably contradicted by the testimony of two of the drivers presented by Yellow Cab as witnesses, who testified that they personally witnessed Landert operating without authority after October 2009. When presented with testimony which cannot be reconciled, it is incumbent upon this Commission to decide what, if any, testimony to believe, and in this case, we credit the testimony of the drivers to the effect that Landert did in fact continue to operate as an uncertificated motor carrier even after being cited and thereby formally placed on notice that he was violating the law. A finding that an applicant is fit and willing, as those terms are defined in S.C. Code Ann. Regs. 103-133(4)(a) and (c), requires, *inter alia*, a determination that the applicant is familiar with the statutes and regulations governing motor carriers and is willing to comply with those statutes and regulations. We have weighed the credibility of the witnesses in this case and found that Landert willfully continued to operate his car for hire without authority after being fined for doing so, in spite of his testimony to the contrary, and that he therefore flouted the Commission's regulatory authority. For the above-stated reasons, we therefore find that he has demonstrated that he fails to meet the fit and willing requirements contained within the applicable regulation.

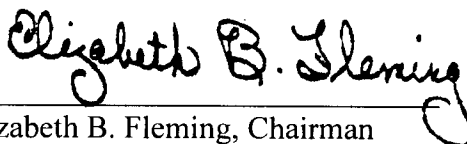


Our findings leave us no option but to deny Landert the certificate for which he has applied. No part of our decision is based upon Yellow Cab's argument that current economic conditions do not support the entry of another carrier into the market or that the public convenience and necessity is already being served by the existing carriers. Rather, our decision is based upon our finding that the Applicant is not fit, willing, and able to perform the duties of a motor carrier for hire because he has an unsatisfactory history of moving violations, accidents, and suspensions, and because we have judged the applicant's truthfulness and respect for the Commission's regulatory authority to be lacking.

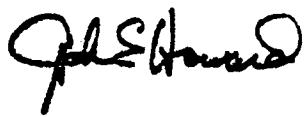
#### CONCLUSION

After hearing the testimony and reviewing the record in this matter, we find the Applicant has not shown he is fit, willing, and able to perform the services he seeks to perform and deny the application for a Class C Charter Certificate. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:

  
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John E. Howard, Vice Chairman

(SEAL)